

AMERICAN BIRD CONSERVANCY*FOREST CONSERVATION COUNCIL*HUMANE
SOCIETY OF THE UNITED STATES*DEFENDERS OF WILDLIFE

March 9, 2005

Marlene H. Dortch, Commission Secretary
Federal Communications Commission, Office of the Secretary
445 12th Street, SW
Washington DC 20054

Re: Reply Comments on WT Dkt. No. 03-187, Avatar
Environmental, LLC, Report Regarding Migratory
Bird Collisions with Communications Towers

Dear Federal Communications Commission:

These reply comments are submitted on behalf of American Bird Conservancy, Forest Conservation Council, The Humane Society of the United States, and Defenders of Wildlife in response to the filed comments on the Avatar Environmental, LLC, Report Regarding Migratory Bird Collisions with Communications Towers, WT Dkt. No. 03-187, hereafter cited as Avatar Report.

We had previously submitted comments on February 14, 2005 and attached a comprehensive analysis by Land Protection Partners of the science, conclusions, and recommendations found in the Avatar Report. This analysis was authored by Travis Longcore, Ph.D., Catherine Rich, J.D., M.A., and Sidney A. Gauthreaux, Jr., Ph.D. We also submitted comments on November 11, 2003 regarding the FCC Notice of Inquiry (NOI) in WT Dkt. No. 03-187.

We attach to this reply comment an analysis of the comments filed in WT Dkt. No. 03-187 by Land Protection Partners and request that this document be made part of our reply comments. The attached analysis reviews the scientific merit of the comments submitted by other parties in response to the Avatar Report in WT Dkt. No. 03-187. As noted and discussed in the attached analysis by Land Protection Partners (LPP), the filings from other than the telecommunications/tower industry were generally supportive of the interpretation of the state of the science presented in the previous analysis by LPP submitted as part of the comments filed on behalf of American Bird Conservancy, Defenders of Wildlife, Forest Conservation Council, and The Humane Society of the United States. For example, Dr. Joelle Gehring submitted a report of her research that shows a greater risk to migratory birds from taller structures, and from guyed towers. The Arizona Game and

Fish Department provided comments that were largely consistent with our observations as well. The U.S. Fish and Wildlife Service also submitted comments that were consistent with our review of the scientific literature.

In reviewing the comments filed, LPP notes that: "The comments submitted by or on behalf of the telecommunications/tower industry are substantially lacking in analytical quality and are, at least in substantial part, inconsistent with the scientific literature....The telecommunications/tower industry's comments are characterized by a selective interpretation of what constitutes reliable information upon which to base policy changes." LPP proceeds to document these analytical quality issues and inconsistencies with the scientific literature. We will not reiterate these problems but reference the FCC to the attached LPP analysis.

We fully concur with and support the conclusion reached by LPP scientists that: "The telecommunications/tower industry maintains that scientific understanding of deaths of migratory birds at communications towers is insufficient to take any action at all. As was documented in the American Bird Conservancy et al. comments and our analysis that accompanied those comments on the Avatar Report, ample scientific evidence is available to enact policy changes that would substantially reduce bird deaths at towers without interfering with the expansion of telecommunication services or the maintenance of air traffic safety."

We believe that our previously filed comments of February 14, 2005 with the first LPP analysis, the other comments submitted based on sound science and peer-reviewed research, and the reply comments submitted herein, including the LLP analysis, clearly document and establish that:

1. AVIAN MORTALITY AT COMMUNICATION TOWERS IS SIGNIFICANT.

"The available research and data indicate that mortality at communication towers is biologically significant for a number of avian species and that, in any event, the mortality clearly has a significant impact for bird species under NEPA." See attached and previous LPP Analysis.

2. TOWER LIGHTS SHOULD BE AVOIDED WHERE POSSIBLE; WHEN REQUIRED, LIGHTING SYSTEM SHOULD BE STROBE LIGHTS ONLY.

"Reducing the attraction of birds to towers is a critical factor in minimizing bird deaths at towers. Without attraction, birds may still encounter and be killed in collisions with towers that are sited in migratory pathways, but the sum of the available scientific evidence indicates that mortality would be

greatly reduced by using only strobe lights at towers. The evidence we cited in our analysis fully supports the U.S. Fish and Wildlife Service tower siting guidelines that provide:

2. If collocation is not feasible and a new tower or towers are to be constructed, communications service providers should be strongly encouraged to construct towers no more than 199 feet above ground level (AGL), using construction techniques which do not require guy wires (*e.g.*, use a lattice structure, monopole, etc.). **Such towers should be unlighted if Federal Aviation Administration regulations permit....**

5. If taller (>199 feet AGL) towers requiring lights for aviation safety must be constructed, the minimum amount of pilot warning and obstruction avoidance lighting required by the FAA should be used. Unless otherwise required by the FAA, **only white (preferable) or red strobe lights should be used at night, and these should be the minimum number, minimum intensity, and minimum number of flashes per minute (longest duration between flashes) allowable by the FAA. The use of solid red or pulsating red warning lights at night should be avoided. Current research indicates that solid or pulsating (beacon) red lights attract night-migrating birds at a much higher rate than white strobe lights. Red strobe lights have not yet been studied.** [Emphasis added.] See attached and previous LPP Analysis.

3. GUY WIRES SHOULD BE AVOIDED.

“...the scientific evidence and research, and the lack of records of mass bird kills at guyless towers in the reviewed literature, is sufficient for reasonable scientific minds to conclude that guy wires greatly increase mortality at towers. The FCC could significantly reduce avian mortality at communications towers by allowing construction only of guyless towers unless applicants document that such construction is not feasible. We believe that the evidence supports the scientific merit of the U.S. Fish and Wildlife Service tower siting guidelines on the use of guy wires:

2. If collocation is not feasible and a new tower or towers are to be constructed, communications service providers should be strongly encouraged to construct towers no more than 199 feet above ground level (AGL), **using construction techniques which do not require guy wires (*e.g.*, use a lattice structure, monopole, etc.).** Such towers should be unlighted if Federal Aviation Administration regulations permit.

7. Towers and appendant facilities should be sited, designed and constructed so as to avoid or minimize habitat loss within and adjacent to the tower “footprint”. **However, a larger tower footprint is preferable to the use of guy wires in construction.** [Emphasis added.] See attached and previous LPP Analysis.

4. TOWERS SHOULD BE LESS THAN 200 FEET WHENEVER PRACTICABLE.

“Taller towers (>500 feet) result in higher bird mortality than medium towers (200–499 feet), which in turn result in high bird mortality than short (<199

feet) towers. Because towers less than 199 feet do not require obstruction lighting, they are preferable to other towers. Our analysis in this report shows that minimization of mortality at medium towers is important, because these towers likely account for 30–40% of birds killed at towers. Reduction of hazard to birds at towers taller than 200 feet should take place through design (guyless where practicable), siting (away from migratory pathways along ridgelines and watercourses), and lighting (strobe only lighting).” See attached and previous LPP Analysis.

5. FCC SHOULD ADOPT U.S. FWS TOWER SITING GUIDELINES TO PREVENT/MINIMIZE AVIAN MORTALITY.

“The U.S. Fish and Wildlife Service tower siting guidelines would reduce the significant adverse impact on biological resources caused by communications towers. The most recent research, as we have documented, furthers supports these recommendations. The telecommunications industry and its consultant has not adequately considered the most recent research and is wrong to assert that scientific information is insufficient to develop mitigation measures to reduce the destruction of migratory birds at communications towers.” See attached and previous LPP Analysis.

6. FCC SHOULD IMMEDIATELY ACT TO COMPLY WITH NEPA, MBTA, AND ESA.

The FCC is currently and has been for years in violation of the National Environmental Policy Act (NEPA), Migratory Bird Treaty Act (MBTA), and the Endangered Species Act (ESA) under its current system of authorizing, licensing, approving, and registering communication towers. The authors of the Avatar Report were directed by the FCC to ignore these regulatory, legal, policy, and administrative requirements. Thus, the Avatar Report makes no recommendations that would correct these violations of Federal environmental laws.

The FCC has been aware of these serious deficiencies and illegal operations for over five years as the U.S. Fish and Wildlife Service (FWS), the undersigned groups, many other groups, and appellants in tower cases have repeatedly documented bird kills caused by towers. On November 2, 1999, the Director of the U.S. FWS sent a letter to the FCC Chairman urging the completion of a programmatic EIS under NEPA to ascertain the magnitude, causes, and avoidance measures for avian mortality at communication towers. The FCC declined to conduct an EIS and has done virtually nothing new to comply with NEPA over the last five years. The FCC has further delayed any action to protect migratory

birds since May 2003, when it announced its intention to conduct the Notice of Inquiry.

The Avatar Report does not adequately address the significance of communication tower mortality to avian species and fails to document research and acknowledge that there are known mitigation measures that could substantially reduce avian mortality at communication towers and that could eliminate mass mortality events at such towers. Other than recommending more research, the Avatar Report is devoid of any recommendations to mitigate avian mortality at communication towers.

The FCC has received extensive information indicating that communication towers are a significant and continuing source of mortality to migratory birds and on mitigation measures that could be employed to prevent/minimize such mortality. Despite this documentation, the FCC has refused to alter its tower registration, approval, licensing, and regulatory programs to better protect migratory birds and instead is further delaying any actions. We urge that the mitigation measures recommended in this letter, our previous comment letter, and in the two analysis conducted by Land Protection Partners and submitted as part of our comments and reply, and the mitigation measures that were recommended by the U.S. FWS in its Tower Guidelines of September 2000, be immediately adopted by the FCC.

The Meyers Report (2000) cited in Avatar at page 4-1 discusses the necessity for adaptive management. There is sufficient research, studies, and other documentation as to the cause of avian mortality at communication towers and for mitigation measures to prevent or at least minimize such mortality. This is well documented in the literature, in newly published studies and in studies *in press*.

We urge the FCC to immediately adopt the reasonable measures detailed in our comment letter and this letter and attachments to avoid or at least minimize avian mortality, as required by Federal law. These policy changes would substantially reduce bird deaths at towers without interfering with the expansion of telecommunication services or the maintenance of air traffic safety

Respectfully Submitted,

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